

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C.416

BILL NUMBER: S-2389

**DATE OF
INTRODUCTION: 05/24/01**

SPONSOR: Senator Allen

**DATE OF
RECOMMENDATION: 08/13/01**

IDENTICAL BILL:

COMMITTEE: Senate Commerce

DESCRIPTION:

Establishes a week-long tax holiday during the last week of July 2001, during which sales of personal computers for non-business use will be exempt from sales and use tax. Also establishes a one-day tax holiday on July 31, 2001, when sales of any item of tangible personal property for non-business use will be exempt from sales and use tax. Specifies that the applicability of the tax holidays is based on the times that the purchaser either (1) pays the purchase price and takes delivery, or (2) places an order and pays the purchase price, even if delivery does not take place until after the exemption period.

ANALYSIS:

It is not clear whether the "holiday" will apply only to sales that take place within New Jersey, and not to compensating use tax imposed on items outside New Jersey. If it is limited to sales physically taking place within the state, this will create a potential federal constitutional problem, since use tax is imposed when tangible property purchased out of state or from non-New Jersey mail order vendors is used in or delivered in New Jersey. The State cannot lawfully exempt a sale of merchandise taking place within New Jersey while imposing tax on a comparable item purchased from an out-of-State source. A "holiday" applicable only to in-State sales, whereby in-State sales would be subject to no tax at all, while the full use tax would be imposed on interstate purchases used in New Jersey, would not likely survive constitutional scrutiny.

It is unlikely that consumers would enjoy a true savings as a result of a tax holiday which merely eliminates the 6% sales tax. Sales offered by a retailer--generally at a percentage far greater than 6%--result in much greater savings for the customer. Confident that the public will be lured to the stores by the prospect of a tax-free holiday, retailers may actually raise their "sale" prices during a tax holiday or elect not to discount regular prices, thus resulting in somewhat of an increase in what the consumer must pay for purchases during that period.

The benefit that consumers would enjoy because of the tax holiday would be proportionate to the amount that they pay for the exempt items. The holiday would therefore be regressive in its impact, since it would give a far greater tax benefit to those who can afford to purchase expensive computers for their personal use.

Legislation like this has the potential to cause a major disruption of operations of state government. Press releases need to be written to explain the scope and duration of the sales tax "holiday", staff in the information services need to be trained, and the Division would need to be prepared to handle a huge increase in information inquiries from vendors and consumers before, during and after the one-week "holiday". The burden of handling the expected increase in volume of telephone inquiries might necessitate the hiring of new temporary personnel, who would need training time, work space, and of course salaries, or the rush of calls might have to be handled by existing personnel, resulting in congested phone lines, long "hold" times, and consequently unhappy callers. The inquiries would not end abruptly as soon as the holiday is over, since many taxpayers who missed the deadline for a tax-free computer purchase would most likely call or write to express their dissatisfaction with the inadequate publicity for the holiday or the timing of the holiday to seek exceptions or extensions of the final cut-off date. Taxpayers who purchased such property immediately before a holiday would also doubtlessly feel aggrieved. Thus, a tax holiday intended as a benefit is likely to become a public relations disaster for the State.

In addition, the sales tax holiday would further alter the broad-based nature of the sales and use tax. A broad-based tax, imposed with limited exemptions on a wide range of transactions, is easy to understand and administer, and is generally perceived by consumers as economically neutral and "fair". When imposed at a fairly low rate, the burden, per transaction, on the individual taxpayer, is relatively small, but the cumulative revenue generated can be enormous. An exemption on purchases during a tax holiday would save an individual taxpayer a fairly insignificant sum. However, the cumulative loss of revenue, some of it unintended, to the State could be substantial. The computer exemption, since it is applicable to expensive purchases, could result in

significant revenue loss, particularly since many people may elect to schedule their purchase of a high-priced computer during the tax holiday in order to enjoy the tax savings. This leaves the State to find other means of generating the money lost as a result of an expanded exemption that has little to recommend it as tax policy.

RECOMMENDATION:

Opposed

COMMISSION MEMBERS FOR PROPOSAL: 0

COMMISSION MEMBERS AGAINST PROPOSAL: 7

COMMISSION MEMBERS ABSTAINING: 0

COMMISSION MEETING DATE: 07/25/01

CMT:dh